

---

## EVALUATOR MANUAL TRANSMITTAL SHEET

---

<b><u>Distribution:</u></b>  ____ All Child Care Evaluator Manual Holders ____ All Residential Care Evaluator Manual Holders <u>X</u> All Evaluator Manual Holders	<b><u>Transmittal No.</u></b> <b>09RM-14</b>
	<b><u>Date Issued</u></b>  October 2009

**Subject:**

AB 978 – Evaluator Manual Revisions

Reference Material - Complaints

---

**Reason for Change:**

Revisions to Evaluator Manual section 3-2400 as needed to comply with AB 978, to update the current names for Investigations Branch and Licensing Program Manager.

---

**Filing Instructions:**

REMOVE – Pages 1, 3, 4, 6, 7, 11, 12, 13, 21, 22, 30, 31, 32, 33, 42, 43, 48, 49 and 55.

INSERT – Pages 1, 3, 4, 6, 7, 11, 12, 13, 21, 22, 30, 31, 32, 33, 42, 43, 48, 49 and 55.

---

**Approved:***Original signed by Thomas Stahl**10/30/09*

---

**THOMAS STAHL** Chief  
Policy Development Bureau  
Community Care Licensing Division

---

Date

---

Contact Person: Edna MusokePhone Number: (916) 323-2785

---

## TABLE OF CONTENTS

General Statement .....	3-2010
Complaints Following the Receipt of Incident Reports .....	3-2011
<b>ACCEPTING COMPLAINTS</b> .....	3-2100
Recording the Complaint .....	3-2110
Establishing Controls .....	3-2120
<b>PLANNING THE INVESTIGATION</b> .....	3-2200
Prioritizing and Evaluating the Complaint .....	3-2210
Complaint Consultants .....	3-2230
Use of Law Enforcement Back-up .....	3-2240
<b>CONDUCTING THE SITE VISIT</b> .....	3-2300
Entrance Interview .....	3-2305
Review of the Facility .....	3-2310
Documenting the Investigation .....	3-2315
Complaints Involving Facilities that are not Owner-Occupied (Community Care Facilities, Residential Care Facilities for the Elderly, and Residential Care Facilities for the Chronically Ill) .....	3-2325
Special Documentation Requirements for Community Care Facilities .....	3-2330
Sample Language for Complaints for Community Care Facilities only .....	3-2331
Exit Interview .....	3-2340
<b>CLEARING THE COMPLAINT</b> .....	3-2400
<b>COMPLAINTS ALLEGING ABUSE</b> .....	3-2600
Definition of Child Abuse .....	3-2600.1
Definition of Dependent Adult Abuse .....	3-2600.2
Definition of Elder Abuse .....	3-2600.3
Delaying the Ten-Day Complaint Visit .....	3-2602
Investigations Branch Referral .....	3-2603
Regional Office and County Licensing Office Procedures .....	3-2604
Assisting other Investigatory Agencies .....	3-2605
Investigating Allegations of Abuse .....	3-2610
Definition and Sources of Evidence .....	3-2615
Examples in Child Abuse Case .....	3-2615.1
Examples in Adult Abuse Case .....	3-2615.2
Examples in Elder Abuse Case .....	3-2615.3
Guidelines for Conducting Interviews in Abuse Cases .....	3-2620
Additional Considerations when Interviewing Children: .....	3-2620.1
Additional Considerations when Interviewing Elderly Witnesses .....	3-2620.3
Evaluating the Evidence .....	3-2625

**3-2010 GENERAL STATEMENT****3-2010**

A complaint is an allegation that any Department of Social Service licensing regulation or law is being violated. The source of the information may be anyone, including a child, client, parent, guardian, conservator, authorized representative, relative, representative of a client, facility employee, neighbor, an agency using the facility and/or others in the community. The information may be given by a person who may not indicate it is a complaint, but believes there is a problem. As long as the information raises reasonable questions about the care of the clients or the condition of the facility that could possibly be a violation of one or more licensing regulations, record the information as a complaint and follow the complaint procedures.

Analysts need not initiate a complaint against a facility in order to authorize a visit. If an analyst has a concern about a facility in their own caseload that arises from an incident report, for example, that concern will be handled as a case management visit. This does not prevent an analyst from initiating complaints in situations involving facilities outside of their own caseloads. An example of this would be if an analyst is a parent of a child in a licensed day care facility and, as a parent, wishes to report an allegation of non-compliance. Another example would be if an analyst has a parent or relative residing in a residential facility. Also, analysts should report possible violations of Title 22 regulations they observe, even outside their own caseload, to the responsible analyst or **Licensing Program Manager**. **These reported situations will be evaluated and handled as complaints.**

Foster Family Agencies investigated complaints about Certified Family Homes beginning in 1993. Since June 28, 1999, statutory law requires the Department to assume complaint investigations of Certified Family Homes. Because third parties were accustomed to reporting complaints directly to the Foster Family Agency, it is necessary during the transition for Foster Family Agencies to report those third party complaints to the Department and for the Department to treat those third party complaints as complaints, not as incident reports. If a Foster Family Agency reports a complaint made about a Certified Family Home by a third party, (in some situations staff and/or clients can be third parties), treat this report as a complaint.

While this section of the Evaluator Manual is restricted to complaint investigations and visits, it is by no means exhaustive. The purpose of this section is to provide guidance in the complaint process: receiving, analyzing, researching and investigating information alleging violations of licensing laws and regulations of Community Care Licensing Division regarding allegations of abuse. This Reference Section is intended to provide information for planning a course of action for resolving a variety of problems that can occur within facilities. This information is not a replacement for individual judgment; nor can it substitute for ongoing counsel from your **Licensing Program** Manager.

The analyst is responsible for promptly initiating and following through on complaint investigations in the designated time frames mandated by law and the procedures outlined in this manual. However, there are situations when other entities may be involved and actually conduct the investigation.

## 3-2010 GENERAL STATEMENT (Continued)

3-2010

Upon receiving allegations involving priority I or II situations, the analyst is responsible for referring the complaint to the appropriate **Investigations Branch** prior to initiating any action on the complaint. **(These referral procedures do not apply to county licensing workers.)** If a law enforcement agency is in the process of conducting an investigation, it is still necessary to refer the case to **Investigations Branch**.

**Priority I (MANDATORY REFERRAL)**

1. Complaints of **sexual abuse** that involve the penetration of the genitals, anus, or mouth of any of the persons involved (including, but not limited to rape, oral copulation, sodomy, use of a foreign object) when:
  - a. The victim is a client or the alleged sexual conduct poses a potential health and safety risk for clients.
  - b. The suspect may or may not be associated with the facility (for example: licensee, staff, relatives of licensee, unknown perpetrator).
  - c. The abuse is alleged to have occurred in the facility or while the client was under the care and supervision of the licensee/staff.
2. Complaints of **physical abuse** that involve acts resulting in great bodily injury such as broken bones, severe cuts, head injuries, burns, when:
  - a. The victim is a client or the alleged physical abuse poses a potential health and safety risk for clients.
  - b. The suspect may or may not be associated with the facility (for example: licensee, staff, relatives of licensee, unknown perpetrator).
  - c. The abuse is alleged to have occurred in the facility or while the client was under the care and supervision of the licensee/staff.
3. Complaints involving suspicious circumstances regarding the **death** of a client, either in or out of the facility.
4. Complaints of lack of **care and supervision** which result in Priority I sexual or physical abuse to a client. Also included, but not limited to, stage three and four dermal ulcers, malnutrition, dehydration, hypothermia, etc.
5. Complaints of **abuse** that involve acts such as assault and/or battery, that if successful, would result in death or great bodily injury (for example: licensee/staff firing a weapon at a client, use of an object/weapon on a client that could inflict death or great bodily injury).

**3-2010 GENERAL STATEMENT (Continued)****3-2010**

5. Complaints of licensee, staff, others residing or present in the facility using, or selling illegal drugs other than “felony” drugs (for example: marijuana, alcohol-provided to minors).

**Priority III (OPTIONAL REFERRAL)**

1. Complaints of **physical abuse** that involve acts such as assault and/or battery, shoving, pushing with no injuries or bruises.
2. Complaints of actions by a licensee, facility employee, volunteer, other clients, or unidentified suspect of **misdemeanor** offenses, including but not limited to, neglect, or lack of supervision.

**Priority IV (REGIONAL OFFICE RESPONSIBILITY)**

1. Complaints of physical punishment/corporal punishment to clients defined as spanking (using the hand), lack of supervision that did not result in any abuse or injury, unsanitary conditions and other regulatory violations.
2. Includes complaints of client on client conduct that does not meet Priority I, II, or III criteria.

If for some reason **Investigations Branch** is unable to accept the referral on a priority I or II case, **Investigations Branch** can still be used as a resource. The Licensing Program Analyst or **Licensing Program** Manager can contact the Investigator assigned to that Regional Office or the Supervising Investigator for guidance on difficult investigations or advice on interviews. **Investigations Branch** can be of particular value to an inexperienced Licensing Program Analyst or with intricate issues rarely handled by Licensing Program Analysts.

Analysts will be required to assume primary responsibility for complaint investigations involving serious physical abuse, sexual assault or suspicious death only if a law enforcement agency or **Investigations Branch** are unable to conduct the investigation. When conducting these types of investigations, the analyst must adhere to the procedures specified in Evaluator Manual sections 3-2600 through 3-2650, Complaints Alleging Abuse.

The term “analyst” or “Licensing Program Analyst” is used throughout this section and includes both State and county licensing workers. (Refer to the Definition Section in California Code of Regulations, Sections 80001 (e) (3), 87101 (e) (3), 101152 (e) (12) and 87001 (e) (1). Distinctions between State and county personnel are specified.

The term “Child Care Facilities” is used throughout this section and includes both Child Day Care Centers and Family Child Care Homes.

**3-2011 COMPLAINTS FOLLOWING THE RECEIPT OF INCIDENT REPORTS****3-2011**

Reports generated by the facility to notify the licensing agency of special incidents, death or injury, use of restraints, outbreak of disease, personnel changes, structural changes and other information of a critical or emergency nature are not considered complaints. Even though these reports may indicate a range of problems with the facility, and may require a special inquiry, evaluation and follow-up, the information is an admission by the facility that the event did actually happen and thus is not suitable for investigation as a complaint allegation. However, if another individual reports the same incident as a complaint, the Regional Office should accept the allegation as a complaint and then follow up as appropriate. If the information provided by the complainant is different or is in conflict with what the licensee reported, further investigation and a visit may be warranted. If the information is exactly the same and the **Licensing Program** Manager is satisfied with the follow up that was done after the incident report was received, no further action may be required.

Complaints may be received by telephone, letter or in person. Complaint contacts should be handled by analysts rather than clerical staff. Complainants should be treated with courtesy and assured of the Department's concern for quality of care in licensed facilities.

At times, complaints may involve allegations that are not within the scope of the licensing agency; for example, a disgruntled employee calls to complain about wages, hours or unfair working conditions. If known, refer the complainant to the appropriate agency, in this case, to the Department of Industrial Relations. Refer complaints about county-licensed facilities to the county licensing agency, even if that facility is a Foster Family Home used by a Foster Family Agency.

Complaints about alcohol and/or drug treatment facilities for adults must be referred to the Department of Alcohol and Drug Programs, the agency with complete oversight jurisdiction. Community Care Licensing Division no longer licenses these types of facilities.

Many complainants feel uneasy about calling the licensing agency. Assure complainants of their right to register a complaint and to have their identity remain confidential. Advise callers that their identity will be kept confidential even if they provide their names, addresses or telephone numbers for further contact. However, complainants should be advised that occasionally licensees are able to identify a complainant from sources other than the licensing agency or by the nature of the allegation itself. If this occurs, the licensing agency is still required to withhold any information regarding the complainant.

The protection of confidentiality applies to all complainants, even if they are organizations rather than individuals. Therefore, if the complaint is referred to Community Care Licensing Division by another agency, e.g., resource and referral, the licensee is not entitled to know the identity of the agency unless the complainant waives his/her/its right to confidentiality.

Analysts are encouraged to keep a supply of blank Complaint Reports (LIC 802) near the telephone or in their computer for use when taking complaint information. When accepting a complaint, the analyst should identify not only the problem but how the complainant received knowledge of the problem and the extent to which he/she may be a resource in investigating the complaint. This includes an evaluation of the complainant's ability for making judgments and his/her willingness to provide a statement or act as a witness, if needed. (See Section 3-2110 for Recording a Complaint).

**3-2200 PLANNING THE INVESTIGATION****3-2200**

Because complaint investigations involve more “leg work” than routine facility evaluations, it is important to plan an investigative approach to ensure comprehensive data gathering in the event the investigation results in an administrative action.

Upon receiving the complaint assignment, identify the extent of the problem and the laws and regulations that may have been violated. A **Licensing Program** Manager should be immediately informed of all allegations that, if true, would endanger the health and/or safety of any clients or children in care. Allegations of abuse and other immediate health and safety threats are always first priority. **Prior to conducting the complaint investigation, the Licensing Program Analyst must contact the complainant, if one is indicated on the LIC 802, and obtain clarification and/or additional information regarding the allegation(s).** Record this additional information on the back of the LIC 802 in the section marked “Pre-Investigation Contact with Complainant.”

By law (Welfare & Institutions Code 9721), complaints referred by the Office of the State Long-Term Care Ombudsman are given priority. Additionally, in 1982, Assembly Bill 2997 (Chapter 1457) (Welfare & Institutions Code 9725) was passed stating that the identification of a resident “shall remain confidential unless disclosure is authorized by the patient or resident or his or her conservator or legal representative.” Thus, if the Ombudsman is referring a complaint on behalf of a client and refuses to relinquish any client identifying information, the analyst shall still accept the submitted information as a complaint and proceed with the investigation. If the investigation is difficult to pursue because of insufficient client-related information, the Ombudsman should be re-contacted. The difficulty should be explained and all possible information collected from the Ombudsman. The investigation shall commence on the basis of available information, as with complaints from other sources.

Prior to making a complaint site visit, the analyst must review the file, and according to Regional Office procedures, discuss the serious cases with a **Licensing Program** Manager. During the file review, the number and kind of substantiated complaint violations should be noted. This information may be needed later to determine if the licensee (Community Care Facilities only) will have to be notified to send copies of the LIC 9099s to the clients’ authorized representatives should this complaint be substantiated (Refer to Evaluator Manual section 3-2330, Special Documentation Requirements for Community Care Facilities). Any records which are not confidential and which may be helpful can be photocopied for reference during the site visit.

If there is a complaint about a Certified Family Home, consider contacting other Regional Offices that have Certified Family Homes associated with the same Foster Family Agency. The purpose of this contact is to determine whether there is the same type of problem with many Certified Family Homes of the same Foster Family Agency. If this appears to be true, Analysts should investigate whether there may be a systemic problem within that Foster Family Agency.

Analysts are mandated by law to report suspected abuse. (Refer to Reference Material Complaints Sections 3-2600 through 3-2630 for investigating abuse, Reference Material Reporting Requirements Section 4-0000 for reporting procedures, and California Code of Regulation, Title 22, Sections 80044 and 80045 for Community Care Facilities; 82044 for Adult Day Programs, 87755 and 87756 for Residential Care Facilities for the Elderly; 87844 and 87845 for Residential Care Facilities for the Chronically Ill, 89244 and 89245 for Foster Family Homes; 101200 and 101201 for Child Care Centers; and Reference Material Complaints Section 3-2300 for details on preparing for the visit.)



**3-2210 PRIORITIZING AND EVALUATING THE COMPLAINT****3-2210**

Analysts are responsible for making their **Licensing Program** Managers aware of all complaints, especially those concerning the health and safety of children and clients. The **Licensing Program** Manager and analyst may jointly decide it is necessary for the analyst to make an immediate visit.

In offices serving remote areas, it may be expedient for the **Licensing Program** Manager to call an analyst in the field to respond to the complaint because he/she may be in the general location of the facility.

The following are examples of complaint situations seriously endangering the health and safety of clients or children:

1. Fire hazards
2. Misuse of medication
3. Priority I or II Allegations

Sometimes complaints are filed with the licensing agency in order to harass a licensee. Suspected harassment, i.e., repeated complaints which have over time never been substantiated, should be thoroughly documented detailing considerations of the complainant's motivation, the number of times the complainant has filed allegations against the facility, how recently the last inspection was made, history of the facility, and the probability that the violation exists.

It is essential for an analyst to exercise caution when dealing with complaints which involve neighborhood disputes. Even though the complaint may be filed as the result of unrelated disputes or hard feelings, the basis for the complaint may be factual. It is the determination of this factual basis that is the concern of the Department. In most cases, at least one site visit will be necessary to assess the situation. During the visit, complaint details and observations must be carefully recorded.

Regardless of whether harassment is determined, the Complaint Report (LIC 802) should be completed. Elements of the complaint should be listed on the front, the rationale for suspected harassment on the reverse side. The LIC 802 then follows the normal control procedures and is sent to the **Licensing Program** Manager for review. If the **Licensing Program** Manager is in agreement that the complaint is harassment and without substance, he/she would sign off; thus, a site visit would not be required.

**3-2230 COMPLAINT CONSULTANTS****3-2230**

Some complaint investigations may require technical knowledge and expertise beyond the capabilities and/or duties of licensing staff. Assistance with these cases is available to State licensing offices from consultants under contract with the Department and from other State or local agencies. Most often these services are useful during a joint visit to the facility.

**The consultants under contract specialize in medicine, nursing, nutrition, pharmacology, psychiatry and psychology. These services can be requested through a **Licensing Program** Manager.**



**3-2230 COMPLAINT CONSULTANTS (Continued)****3-2230**

Other agencies whose technical assistance may be very valuable and may have a mutual interest in the facility include:

1. Local fire departments
2. State/local health departments
3. Client advocate groups
4. Placement agencies
5. Protective service agencies
6. Law enforcement agencies
7. Resource and referral agencies

**3-2240 USE OF LAW ENFORCEMENT BACK-UP****3-2240**

In cases where there may be physical danger to the analyst, (i.e., investigation of unlicensed operations in high crime areas or situations where drug dealing is part of the allegation) the analyst and **Licensing Program** Manager may determine that local law enforcement back up is necessary. This should be arranged prior to the visit and noted on the LIC 802.

**3-2300 CONDUCTING THE SITE VISIT****3-2300**

The purpose of Evaluator Manual sections 3-2305 through 3-2400 is to provide basic guidelines to the analyst for resolving complaints that do not involve allegations of physical or sexual abuse. Upon receipt of these complaints, the licensing agency must respond within ten calendar days.

**3-2305 ENTRANCE INTERVIEW****3-2305**

Complaint visits are made without prior notice to the licensee; in other words, they are “unannounced”. Before entering the facility, the analyst must identify him/herself to the licensee, or person in charge. Once inside the facility, the analyst should explain the purpose of the visit and the basic elements of the complaint. In all cases except those involving Priority I or II allegations, the analyst shall apply the standard practice of divulging the substance of the complaint during the ten-day on-site visit. Refer to Evaluator Manual sections 3-2325, Complaints Involving Facilities That Are Not Owner-Occupied, 3-2605, Assisting Other Investigatory Agencies, and 3-2610, Investigating Allegations of Abuse, for details on exceptions to this rule.

If there is a complaint about a Certified Family Home, the analyst may involve the Foster Family Agency before the ten-day on-site complaint visit to the Certified Family Home. However, the substance of the complaint must not be revealed before the Certified Family Home complaint visit as required by Health and Safety Code Section 1538(b).

The analyst must review the Foster Family Agency’s Certified Family Home record before or after visiting the Certified Family Home.

**3-2331 SAMPLE LANGUAGE FOR COMPLAINTS FOR  
COMMUNITY CARE FACILITIES ONLY (Continued)****3-2331**

(NAME(S) OF LICENSEE(S)) shall correct this deficiency by sending the notification of substantiated complaints by (ENTER DATE). If the deficiency is not corrected by (ENTER DATE), the Department will initiate civil penalty action against the licensee in accordance with Title 22, California Code of Regulations Section 80054.

**3-2340 EXIT INTERVIEW****3-2340**

The purpose of the exit interview is to ensure that the licensee/administrator clearly understands the outcome of the investigation and what, if anything, is expected of him/her. When there is reasonable doubt and a need for further investigation, the analyst should explain that further evaluation and possible follow-up visits are necessary before making a decision regarding resolution of the complaint allegation(s). Remember, it is always better to take the time to gather all the required evidence/facts necessary to make a determination as opposed to reaching a resolution prematurely. In this case, the analyst will check the box on the LIC 9099, "Needs Further Investigation" and indicate an estimated time of completion, such as 30, 45, 60, or 90 days. The investigation should not exceed 90 days.

Before exiting a Certified Family Home, let the Certified Family Home parent(s) know that you will be reporting your findings to the Foster Family Agency and that the Certified Family Home parent(s) may contact the Foster Family Agency with any concerns or questions about the investigation.

When it has been established that the allegations are unfounded, the analyst should explain this to the licensee and document such on the LIC 9099. With the exception of unfounded complaints, the licensee may use space on the LIC 9099 to document his/her statement regarding the allegations as part of the public record. The licensee may also send a letter at a later date.

At a minimum, each deficiency should be discussed with the licensee/administrator and the analyst should obtain a specific Plan of Correction and due date. The Plan of Correction must be written on the LIC 9099 by the licensee/administrator. If the licensee refuses to write the Plan of Correction or is unable to, then the analyst should write it and document the reason it was completed by the analyst instead of the licensee.

At this time the analyst should advise the licensee/administrator that he/she may find it necessary to request an extension of the Plan of Correction due date. This is done by contacting the **Licensing Program** Manager (whose name appears on the LIC 9099) by telephone, FAX or in writing before the original Plan of Correction due date.

If the licensee/administrator disagrees with any application of regulation, the notice of deficiencies, the required Plan of Correction due date or any other finding of consequence related to this visit, he/she should be invited to write these disagreements on the LIC 9099 in the space provided for the Plan of Correction. The analyst should suggest that the individual read the paragraph entitled "Appeal Rights" on the back of the LIC 9099 or the analyst may use the opportunity to read and explain these rights. The licensee/operator should be advised further to include a written argument to support their side of the disagreement and submit any other supporting evidence.

**3-2400 CLEARING THE COMPLAINT****3-2400**

After the investigation is completed and the Licensing Program Analyst has delivered the findings to the licensee, including citations, plans of correction, and possible immediate civil penalties (if violation substantiated), the Licensing Program Analyst must indicate the resolution for each allegation on the LIC 802 and complete the remaining sections. The Licensing Program Analyst shall complete all unfinished documentation (detail supportive forms, etc.) related to the complaint investigation as soon as possible after the findings are delivered to the licensee.

Upon completion of all documentation, the Licensing Program Analyst submits the LIC 802 along with all associated documentation to the Licensing Program Manager for review via the Field Automation System.

Licensing Program Managers are responsible to review the complaint documentation to ensure there was a thorough investigation, the findings are appropriate, and any related citations, plans of correction, and civil penalty assessments are appropriate, and that post-investigation contact with the complainant was followed through with as appropriate. If the Licensing Program Manager determines that other work, such as corrections or additional investigation, is necessary, the complaint will be returned to the Licensing Program Analyst via the Field Automation System with direction and a date for completion.

The Licensing Program Manager approves the complaint investigation and findings by signing the LIC 802 via Field Automation System. The Licensing Program Analyst is responsible for timely follow up to ensure the facility has completed their Plans of Correction. See Evaluator Manual Section 3-3605 Clearing the Deficiency.

The Licensing Program Analyst shall complete all complaint investigations and place a note of final conclusion in the department's facility file, regardless of whether the licensee voluntarily surrendered the license. The LIC 802 is filed in the confidential file and the LIC 9099 is filed in the public file, with the following exception: unfounded allegations for any Community Care Facilities or any Child Care Facilities are to be retained in the confidential file.

All references to Field Automation System apply to Community Care Licensing Division staff and do not apply to counties.

**3-2600 COMPLAINTS ALLEGING ABUSE****3-2600**

Complaints alleging priority I or II situations involving children, clients, or residents are considered top priority and are to be handled expeditiously. The steps involved in abuse investigations differ from routine complaint investigations and should be carefully planned with the assistance of the supervisor.

The procedures in Evaluator Manual, Reference Material Sections 3-2602 through 3-2650, below, are to be used by all county licensing staff and Regional Offices. Regional Office staff must refer all allegations of serious abuse or suspicious deaths to Investigations Branch, as outlined in Evaluator Manual section 1-0620, Investigative Priorities. The referral procedures are to be followed prior to beginning the complaint investigation.

In addition, because they are Department licensing employees, analysts must comply with the requirements to report suspected abuse of children, dependent adults and elders. (Refer to the Licensing Program Manager Guidebook for general directions on Evaluators role as Mandated Reporters. Refer to Evaluator, Reference Material Section 4-0000, Abuse Reporting Requirements, for Child Care cases. See form PS 314 for thorough instruction, and procedure, regarding who must report abuse of dependent adults and elders.)

**3-2603 INVESTIGATIONS BRANCH****3-2603**

Referring a case to **Investigations Branch** is not a valid reason, in and of itself, for delaying the complaint visit. If a case has been referred to and accepted by **Investigations Branch**, the required ten-day visit must still be made. It is important to communicate with the **Investigator** in order to coordinate the areas of responsibility regarding the complaint and determine who will make the ten-day visit. However, if **Investigations Branch** cannot make this visit within the required ten calendar days, the Regional Office is ultimately responsible for making the visit, or determining that the case meets the criteria for postponement. Regardless of who assumes responsibility for the case, the ten-day complaint visit may only be postponed when authorized by the Regional Manager, using the criteria in Evaluator Manual section 3-2602, Delaying the Ten-Day Complaint Visit.

When **Investigations Branch** completes its investigation, a final report will be submitted to the Regional Office for review. If a citation is warranted, the Regional Office must cite the licensee for violations within ten (10) days of receipt of a **Investigations Branch** report, unless there is a specific reason to delay the citation.

**3-2604 REGIONAL AND COUNTY LICENSING OFFICE PROCEDURES****3-2604**

Once it has been determined that a delay in making the ten-day on-site visit is necessary due to the conditions in Evaluator Manual section 3-2602, Delaying the Ten-Day Complaint Visit, document the reasons for the delay on a LIC 812 and attach to the LIC 802. Include the following information:

1. Reason the delay was requested;
2. Agency and contact person(s) requesting the delay;
3. Regional Manager/County Licensing Supervisor approval.

Subsequent to approving a delay, the Regional Manager or County Licensing Supervisor is responsible for monitoring the ongoing investigation and ensuring the licensing agency's timely follow-up and resolution of the complaint. The investigation must still be initiated within ten days regardless of the fact that the site visit has been delayed.

**3-2605 ASSISTING OTHER INVESTIGATORY AGENCIES****3-2605**

Even though the ten-day on-site complaint visit has been delayed, a law enforcement agency may request that an analyst visit the facility or Certified Family Home in order to obtain information that will assist them with their investigation, e.g., names, addresses and phone numbers of all children or clients and their parents or representatives. During this visit, it is not necessary to divulge the nature of the allegation(s) to the licensee, designated representative or certified family parent if such information could place the child or client's well-being in jeopardy. Refer to the language used in Evaluator Manual section 3-2610, Investigating Allegations of Abuse.

**3-2605 ASSISTING OTHER INVESTIGATORY AGENCIES (Continued) 3-2605**

This policy differs from the standard practice of explaining the purpose of the visit and the substance of the complaint during the entrance interview. Refer to Evaluator Manual section 3-2305, Entrance Interview. Whenever the allegations cannot be fully disclosed at the time of the visit, the analyst must inform the licensee that this information will be presented during a return visit. Refer to Evaluator Manual section 3-2640, Informing the Licensee of Complaint, for exceptions to the return visit.

**3-2610 INVESTIGATING ALLEGATIONS OF ABUSE 3-2610**

If no other agency is investigating the abuse incident, it becomes incumbent upon the licensing agency to initiate a course of action. Procedures for investigating cases of abuse differ somewhat from the routine complaint investigation process. These differences, which are identified below, are critical and must be agreed upon by the **Licensing Program Manager**:

1. Invoking the criteria for delaying the visit, unless the Regional Manager has determined that there would be significant risk to the clients if the exact nature of the allegations were disclosed;
2. Interviewing witnesses and victims prior to visiting the facility or Certified Family Home;
3. Obtaining declarations from witnesses and victims;
4. Withholding full disclosure of the substance of the complaint from the licensee or Certified Family Home parent(s) except for certain facility categories;
5. Deciding how the licensee will be informed of the investigative results.

Once the complaint has been assigned, the analyst should contact the complainant to obtain all the pertinent facts and details surrounding the allegation. If it appears the complainant has detailed knowledge of the allegations, an appointment should be made to discuss the complaint and obtain a declaration. During this initial contact it is important to obtain from the complainant the names, addresses and telephone numbers of any other witnesses.

Witnesses and victims should be interviewed in person and away from the facility premises when possible. These interviews should ideally take place prior to the analyst's first facility/Certified Family Home site visit. Because of the sensitivity of abuse investigations, a gender-appropriate co-worker should normally accompany the lead analyst to witness or conduct the interviews.

Unless prior approval has been obtained from the Deputy Director through the Program Administrator or Regional Manager or County Licensing Supervisor, do not use video tape equipment to record the interview and/or the evidence.

**3-2610 INVESTIGATING ALLEGATIONS OF ABUSE (Continued)****3-2610**

Photographs, however, are permitted unless the child or client objects. While use of audio equipment is not prohibited, it shall be used only with approval from the Regional Manager or County Licensing Supervisor. This will ensure that any legal technicalities will not be overlooked when recording the statements and interviews. For example, Penal Code Section 632 makes it a crime to record a confidential communication without the consent of all parties to the communication, by means of any electronic amplifying or recording device. This is the case whether the conversation is carried on face to face or over the telephone.

In priority I and II situations to interview day care children, it is best to telephone the parents and set up an interview time and place that is convenient for them. When contacting the parents it is important not to alarm them or discuss too many details over the telephone. The analyst must properly identify him/herself and indicate he/she is conducting a complaint investigation against the day care facility where their child is enrolled and would like to talk to them in person as well as interview their child. The analyst should always obtain the parent's cooperation and permission before interviewing the child. If parents object to the interview, honor this objection. This does not mean that the complaint investigation stops. Continue the investigation. Interview other victims and witnesses. If appropriate cross refer the case to other agencies, such as Children's/Adult Protective Services, and/or the appropriate law enforcement agency. (See Evaluator Manual sections 3-2645, Notifying Resource and Referral Agencies, and 2650, Notifying the Local Long-Term Care Ombudsman.) If a parent denies permission to interview a child, immediately consult your **Licensing Program** Manager. Also, consult with the Department's Legal Division and/or **Investigations Branch** for advice and guidance on how to handle situations where permission to interview a child is denied by the parent(s).

If the victim and/or witnesses can only be interviewed at the facility or Certified Family Home, the interview shall take place in a private room away from the general activity of the facility staff, Certified Family Home parent(s), other children and clients. When interviewing the victim, refrain from asking questions that might easily upset or traumatize him/her.

The presence of a gender-appropriate co-worker/witness may be of some comfort to the victim, particularly if portions of the victim's body must be viewed. If clothing is covering the injuries on the victim's arms or legs, the victim's permission must be obtained before viewing the injury and, if the victim is able, he/she can roll up the sleeves or pant leg to display the injury. If the victim cannot remove the clothing, the gender-appropriate co-worker may assist. If the injuries are located on parts of the body normally covered by clothing (in keeping with conventional propriety) they may, with one exception, be viewed only to the extent that the victim feels comfortable and only with his/her consent or that of his/her parents or conservator authorized representative who must be present. This discretion does not apply to viewing those personal parts of the body traditionally covered by underwear/swimwear; thus, the analyst may not ever request to see injuries to the victim's genital areas or other parts of the body regarded as private.

Even if the victim is willing, the analyst may not request or allow the victim to completely disrobe. Never remove, nor ask the victim to remove, any bandages or dressings.

If the injuries, bruises or other identifiable marks are visible on parts of the body that are generally not covered (e.g., face, arms, hands, legs), a photograph of such evidence is permissible. Never take a picture if the victim objects. The victim's well-being takes precedence over data collection.



**3-2610 INVESTIGATING ALLEGATIONS OF ABUSE (Continued)****3-2610**

Because some interviews of witnesses and/or victims will have to be conducted at the facility or Certified Family Home, the analyst should consult with a **Licensing Program** Manager, prior to making the visit about the amount and type of information to divulge to the facility operator or Certified Family Home parent(s). Policy guidelines are as follows:

With the exception of complaints involving specific facilities referenced in Evaluator Manual section 3-2325, Complaints Involving Facilities That Are Not Owner-Occupied, when investigating cases alleging physical abuse, sexual assault or suspicious deaths, the analyst shall not be required to convey the specific details of the complaint. However, it is necessary that the purpose of the visit be explained sufficiently so that the licensee is not deceived or deliberately misled. Examples are as follows:

**Correct**      “I am conducting a complaint investigation involving a personal rights violation and have not completed the investigation in order to discuss the details at this time. You will be advised of the allegations and my findings within approximately \_\_\_ days.”

**Incorrect**     “I am only conducting a case management visit.”

Visits in response to complaint allegations are always made without advance notice to the licensee/operator, thus they are unannounced. When investigating the Certified Family Home of a remote Foster Family Agency, the analyst may contact the licensee for an appointment, but must not reveal the substance of the complaint before that appointment.

When the interviews have been completed, the analyst may have gathered sufficient data to feel comfortable about informing the licensee of the findings; particularly if it is undoubtedly clear that the alleged abuse never occurred. In most cases, however, the analysis will require additional time and input; thus the analyst may not want to discuss his/her findings with the licensee or facility operator at this time.

When all data and documents have been collected, the analyst usually confers with a **Licensing Program** Manager for guidance in presenting the findings and proposed course(s) of action to the licensee. Refer to Evaluator Manual sections 3-2305, Review of the Facility; 3-2325, Complaint Involving Facilities that Are Not Owner-Occupied; 3-2340, Exit Interview; 3-2635, Special Requirements for Investigations of Abuse or Neglect in Residential Facilities; 3-2640, Informing the Licensee of Complaint, and 1-0000, Enforcement Actions.

**3-2615 DEFINITION AND SOURCES OF EVIDENCE****3-2615****Definition of Evidence**

Evidence means testimony, writings, material objects, or other things presented to the senses that may prove the existence or nonexistence of a fact.



**3-2620 GUIDELINES FOR CONDUCTING INTERVIEWS IN ABUSE CASES (Continued)****3-2620**

- Ask only one question at a time and wait for it to be answered. If the answer is non-responsive, wait for the answer before asking follow-up questions. Expect to have to repeat questions. Avoid double negatives and hypothetical questions.
- Try to determine what concerns the witness may have which could prevent or hinder disclosure.
- Avoid the use of leading and/or suggestive questions. Go from the open-to-the closed back to the open type of question.
- Avoid use of dolls, diagrams or other such devices until the witness discloses abuse.
- Use the phrase “show me” cautiously when seeking clarification from the witness. Use the witness’s words, use age appropriate language.
- Understand the witness’s sense of “time.” Use maps, diagrams, pictures, videos, television shows, etc. to assist the witness in determining time, place, relationships and/or events.
- Explain the need for additional interviews and end the interview on a positive note, thanking the witness. Tell the witness what may happen next (additional interviews, etc.) and what to do if he/she thinks of other information.

**3-2620.1 ADDITIONAL CONSIDERATIONS WHEN INTERVIEWING CHILDREN:****3-2620.1**

If it becomes necessary to interview a suspected child abuse victim, the interview shall be conducted in accordance with the regulation guidelines under Penal Code Section 11174. Consequently, the assigned **Investigator** or Licensing Program Analyst should attempt to schedule interviews during the child’s class hours unless doing so would alert the person being investigated. One of the reasons for interviewing at the school is to prevent the alleged perpetrator from knowing that a complaint has been filed or that an investigation is in progress, as this could jeopardize the safety of the child.

---

Penal Code Section 11174.3 provides:

“(a) Whenever a representative of a child protective agency or the State Department of Social Services deems it necessary, a suspected victim of child abuse may be interviewed during school hours, on school premises, concerning a report of suspected child abuse that occurred within the child’s home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certified or classified employee or volunteer aide, to be present at the interview. A representative of the child protective agency or the State Department of Social Services shall inform the child of that right prior to the interview.”

**3-2620.1 ADDITIONAL CONSIDERATIONS WHEN INTERVIEWING CHILDREN: (Continued)**

“The purpose of the staff person’s presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.”

**NOTE:** If the staff person selected by the child declines to be present, the child may select an alternate staff person. If no staff person is willing to be present, or no staff person is acceptable to the child, the interview may continue with the child’s consent. If at any time during the interview, the child declines to continue, then the analyst must cease the interview. However, the analyst may consider contacting the child’s placement worker to assist in gaining the child’s cooperation. The analyst may also consider contacting the Department’s Legal Division and/or the **Investigations Branch** for advice in dealing with the interview situation.

“(b) The Superintendent of Public Instruction shall notify each school district and each [child protective agency], and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.”

---

**Juvenile Court Records.** If it becomes necessary to obtain copies of any juvenile court records, California Department of Social Services legal or the Community Care Licensing Division, the Investigations should handle any request for such information. All requests will be made in accordance with the authorities granted in Welfare and Institutions Code Section 827. See Evaluator Manual section 1-1020, Evidence and Documentation.

**3-2627 SPECIAL CIRCUMSTANCES REQUIRING MANDATORY CONSULTATION WITH LEGAL DIVISION****3-2627**

In all cases involving Priority I or Priority II allegations of abuse, if the analyst's preliminary opinion is that the complaint may be *inconclusive*, the following procedure must be followed:

- The analyst must serve a LIC 9099 to the facility informing the licensee that further investigation is needed and indicating an estimated time of completion, such as 30, 45, 60, or 90 days. (See Evaluator Manual section 3-2340, Exit Interview.)
- The analyst must notify and confer with a supervisor regarding the analyst evaluation of the evidence and reasons for arriving at the preliminary opinion that the complaint may be inconclusive.
- If the supervisor agrees with the analyst's preliminary determination, an attorney in the Legal Division must be consulted to review the evidence. This may be done at the monthly Legal Division consultation or by telephone, if necessary, with the pertinent documents being faxed for the attorney's review. If the Regional Office's regular consulting attorney is not available, the supervisor can ask to speak to another attorney or to the Deputy General Counsel. The opinion from the consulting attorney is to be recorded on the form labeled: CONSULTATION MEMORANDUM. This form is covered by attorney/client privilege and must be filed in the confidential section of the case file.
- A final complaint report cannot be issued to the licensee without consultation with an attorney in the Legal Division. If the attorney and the supervisor are not in agreement on the appropriate outcome for a complaint investigation, or that all information available has been collected and considered, the issue must be immediately brought to the attention of the Program Administrator or Regional Manager for a final decision.

**3-2628 SPECIAL REQUIREMENTS FOR INVESTIGATIONS OF ABUSE OR NEGLECT IN RESIDENTIAL FACILITIES****3-2628**

When an investigation of abuse or neglect in a residential facility may be leading to a recommendation for a Temporary Suspension Order, it is important that a complete picture of a facility's operation is obtained to ensure that a less severe remedy is not more appropriate. When immediate facility closure is not an issue, there is ample opportunity for all points of view to be considered in the development of the final complaint resolution. With a Temporary Suspension Order investigation, such an opportunity is not available; the clients have been moved and the facility's operation has been closed down.

When a serious abuse complaint is being investigated for which a Temporary Suspension Order is a likely outcome, the assigned **Investigator** or Licensing Program Analyst is expected to contact with placement agencies and other professionals regarding general facility conditions prior to submitting the case to the Program Administrator. The only exception is when the licensee is directly involved in the abuse or other serious incidents that have occurred, as the facility conditions then are not relevant to the possible license suspension.

**3-2628 SPECIAL REQUIREMENTS FOR INVESTIGATIONS OF ABUSE OR NEGLECT IN RESIDENTIAL FACILITIES (Continued) 3-2628**

Contacts should be made with:

1. Placement agencies or authorized representatives for specific facility clients involved in the abuse allegation.
2. Local law enforcement regarding incidents at the facility and reported run-aways.
3. Medical, psychiatric and psychological professionals known to have contact with clients in the facility.

The Licensing Program Analyst or **Investigator** should discuss general facility conditions, perceptions regarding the quality of care at the facility, and concerns with any aspect of the facility's operation.

Typical questions will address:

1. Last contact with a child/client in placement.
2. Last visit to the facility site and physical observations.
3. Any complaints received from children/clients in care.

Care should be taken not to disclose any information regarding the investigation or expected licensing agency actions. Information obtained during the contacts will be included in the Statement of Facts. Since the processing of Temporary Suspension Order actions is done as rapidly as possible, these supplemental contacts need to be made immediately. If possible, the individual contacted should be asked to submit comments or concerns in writing. When time does not permit, telephone contact will be sufficient. This information should be documented on the Detail Supportive Information Form, LIC 812 or the **Investigator's** report.

If the information obtained indicates that actions would be taken to resolve the problem and minimize the risk to clients (i.e., removal of certain staff, increased supervision, relocation of dangerous clients), the Program Administrator and the attorney shall change the Temporary Suspension Order recommendation and seek other remedies.

**3-2710 INVESTIGATION (Continued)****3-2710**

When all relevant information has been compiled and analyzed, discuss any substantiated findings of child abuse or neglect with your **Licensing Program** Manager. The fact that the allegation is substantiated does not automatically require the denial of the application, the exclusion of the employee or an order to the Foster Family Agency to deny or revoke a certificate of approval. If the facts that can be substantiated are serious enough to raise concern about that person being in contact with children in our facilities, the Regional Office must consider employee exclusion, or other administrative action against the applicant, licensee, or the current or prospective certified family home.

If the decision is not clear, the Regional Office may have the individual come in for an office visit with the Regional Office Manager or supervisor to gain greater insight into the person's behavior and judgment. If the Regional Office has further questions about the Child Abuse Central Index possible match and whether legal action is appropriate, it should consult with the attorney from the Legal Division. Please note that all Regional Office employee exclusions require the approval of Legal.

If the Regional Office determines that legal action is merited, proceed according to the relevant Evaluator Manual sections as follows:

1. Sections 1-1400 through 1-1425 for employee exclusion actions;
2. Sections 1-1400 and 1-1450 for resident exclusions;
3. Sections 1-1400 and 1-1430 for Foster Family Agency Certified Family Home;
4. Sections 1-1000 through 1-1280 for denial of an application on other actions against a licensee.

After the Regional Office renders a recommendation of the Child Abuse Central Index possible match investigation, the appropriate decision box on the Child Abuse Central Index Transmittal must be checked and forwarded along with any documents gathered during the course of the investigation to the Background Information Review Section, MS 19-62, for entry into the Caregiver Background Check System.

Child Abuse Central Index information is highly sensitive. Therefore, care must be taken when documenting the Child Abuse Central Index investigation to ensure confidentiality. Documentation of the Child Abuse Central Index investigation should be recorded on an LIC 812 Detail Supportive Information.

**3-2720 DOCUMENTATION AND STORAGE****3-2720**

Separate LIC 812s should be used for the Child Abuse Central Index investigation and not intermingled with any other documents. Documentation and evidence obtained during the Child Abuse Central Index investigation should be kept in a separate folder and not placed in the facility file.

If the Regional Office decides that legal action is not merited at the conclusion of the investigation, the Child Abuse Central Index investigation material **MUST NOT** be placed in the public portion of the facility file to prevent misuse of the Child Abuse Central Index information. At the end of the investigation, notify the subject of the Child Abuse Central Index investigation by letter that no legal action is to be taken and do not place this letter in the public portion of the facility file.